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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,650	04/02/2004	Sandra A. Strickland	52082/FLC/S1137	1055
23363	7590	07/15/2005	EXAMINER	
CHRISTIE, PARKER & HALE, LLP			NGUYEN, TRINH T	
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/816,650	Applicant(s) STRICKLAND ET AL.	
	Examiner Trinh T. Nguyen	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/10/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4: the phrase "of claim 4" is confusing and unclear.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5, 8-10, 14-18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Thaler et al. (US6378461).

For claim 1, Thaler et al. disclose an enclosed litter box, comprising: a chassis (502) comprising an end opening comprising an end edge; a removable litter tray (20) comprising a first end and a second end slidably coupled to the chassis such that the first end moves away from the end edge while the second end moves closer to the end edge when the tray is moved relative to the end opening (it is noted that Thaler et al.'s tray is capable of being moved relative to the end opening such that the first end moves away from the end edge while the second end moves closer to the end edge. Further,

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note that it is well settled case law that such limitations, which are essentially method limitations or statements of intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 152 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647; and MPEP 2114 & 2115); a manual rake (41,44) located within the removable litter tray; and an enclosure (550,548) mounted to the chassis enclosing the removable litter tray and rake.

For claim 2, Thaler et al. disclose the removable litter tray further comprising an integral handle (173,175,177) having a downwardly facing opening.

For claim 5, Thaler et al. disclose the removable litter tray further comprising: a transverse groove (31,32,34) on an upper rim of a front portion of the removable litter tray; and an opening (31) between a bottom surface of the groove and an interior portion of the integral handle whereby a user may dislodge a handle portion of the manual rake held in the transverse groove.

For claim 8, Thaler et al. disclose an enclosed litter box, comprising: a chassis means for supporting the enclosed litter box; a slidably removable litter tray means within the chassis means for holding litter; said slidably removable litter tray means slidably movable relative to the chassis means while maintaining physical contact, either directly or indirectly, to the chassis means during at least a portion of the movement (it is noted that Thaler et al.'s tray is capable of being moved relative to the chassis means while maintaining physical contact, either directly or indirectly, to the chassis means

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during at least a portion of the movement. Further, note that it is well settled case law that such limitations, which are essentially method limitations or statements or intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 152 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647; and MPEP 2114 & 2115); a manual rake means located within the removable litter tray means for separating animal waste from the litter; and an enclosure means coupled to the chassis means for enclosing the removable litter tray means and the rake means.

For claim 9, Thaler et al. disclose the removable litter tray means further comprising a integral handle means having a downwardly facing opening for use in pulling the removable litter tray means from the chassis means.

For claim 10, Thaler et al. disclose the removable litter tray means further comprising: holding means (31) for holding the manual rake means in a detachable manner; and dislodging means (lines 60-67 of col. 8 and lines 55-65 of col. 10) for a user to manually dislodge the manual rake from the holding means without exposing the user to an interior portion of means.

For claim 14, it is inherently that litter tray (20) comprises a first and second tray positions slidably coupled to the chassis and wherein the first tray position comprises the tray end wall spaced apart from the chassis end wall by a first distance and the second tray position comprises moving the tray relative to the chassis such that the tray end wall is spaced apart from the chassis end wall by a second distance which is

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greater than the first distance since if one is to slidably pull tray (20 as shown in Figure 28) out of the chassis (502) and the enclosure (550) at the end (502).

For claim 15, Thaler et al. further disclose a rake comprising a handle (51,52,58,66,64,59,57).

For claim 16, Thaler et al. further disclose a groove (31,32,34) on an end of the tray.

For claim 17, Thaler et al. further disclose a rake comprising a handle (51,52,58,66,64,59,57) and the handle coupled to the groove.

For claim 18, Thaler et al. further disclose a handle (173,175,177) for slidably moving the tray.

For claim 20, Thaler et al. further disclose the chassis (502) comprises a base and the tray (20) comprises a base wherein the base of the tray abuts the base of the chassis.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6, 7, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler et al. (US6378461) in view of Springer (US4858561) and Official Notice.

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As described above, Thaler et al. disclose most of the claimed invention except for indicating an adhesive label having decorative motif on an outer surface of the enclosure.

Springer teaches a similar enclosed litter box as that of Thaler et al. in which Springer's box having an outer cover (12) covering the outer side of the box wherein the cover is attractive in appearance (equivalent to a decorative motif as claimed). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the box of Thaler et al. so as to include an outer cover, in a similar manner as taught in Springer, since to do so would provide an additional protective means and thus protect the box from damaging.

Furthermore, it is noted that Springer's outer cover is being attached/adhered to the outer surface of the enclosure by fastener closures (24,26,28,30) but not adhesive. However, an Official Notice is taken that using adhesive to attach/adhere one structural member to another structural member is a well known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used adhesive to attach/adhere the outer cover to the outer surface of the enclosure, in light of the Official Notice taken, in order to provide an efficient bond between members and since it is well known in the art to substitute one type of attachment means for another depending on manufacturing requirements and cost constraints.

7. Claims 3, 4, 12, 13, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler et al. (US6378461) in view of Walter (US5713302).

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As described above, Thaler et al. disclose most of the claimed invention except for indicating an enclosure having a notched recess/gravity lock means and a notched blade scoop.

Walter teaches a similar enclosed litter box as that of Thaler et al. in which Walter's box includes an enclosure having a notched recess/gravity lock means (72) for engaging/attaching a notched blade scoop means thereon (see Figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the box of Thaler et al. so as to include an enclosure having a notched recess/gravity lock means for engaging/attaching a notched blade scoop means thereon, in a similar manner as taught in Walter, since to do so would provide a secondary cleaning means in case the rake is defected.

Claim Rejections - 35 USC § 102/103

8. The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102/103(a) that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Furthermore, for claims 14-18, and 20 as rejected above, it is noted that Thaler et al. do teach the litter tray having a first and second tray positions slidably coupled to the

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chassis and wherein the first tray position comprises the tray end wall spaced apart from the chassis end wall by a first distance and the second tray position comprises moving the tray relative to the chassis such that the tray end wall is spaced apart from the chassis end wall by a second distance which is greater than the first distance since if one is to slidably pull tray (20 as shown in Figure 28) out of the chassis (502) and the enclosure (550) at the end (502). In an event that Thaler et al. do not teach the above limitation, then it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the teaching of Thaler et al. so that a user can slidably pull tray (20 as shown in Figure 28) out of the chassis (502) and the enclosure (550) at the end (502) so that litter tray (20) can be cleaned.

Response to Arguments

10. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

The examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T Nguyen
Primary Examiner
Art Unit 3644

7/8/05